

REMARKS/ARGUMENTS

In response to the Office Action mailed April 15, 2009, Applicants propose to amend their application and request reconsideration in view of the proposed amendments and the following remarks. In this amendment, Claims 1, 12, 21 and 31 are amended, no new claims have been added and no claims have been cancelled without prejudice so that Claims 1-23 and 25-54 remain pending. No new matter has been introduced.

Claims 1-6, 9-14, 17-20, 21, 23 and 25-26 were rejected as being anticipated by U.S. Patent No. 4,344,434 to Roberson (Robertson). This rejection is respectfully traversed.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

Robertson discloses an ileostomy closure and drainage appliance to be worn by a user in order to provide a continent ileostomy. The appliance or device comprises a support housing, a preshaped collapsible member and a means for withdrawing fluid from the interior cavity of the preshaped collapsible member to create a reduced pressure therein. The preshaped collapsible member 40 is a fluid tight, deflatable toroidal shaped member. The preshaped collapsible member 40 comprises openings 60 and 62 which extend from the interior to the surface of the member.

Robertson fails to disclose or suggest the device of the amended independent claims. Specifically, Robertson fails to disclose a device comprising a fluid delivery element, a porous applicator and an aspiration element wherein the porous applicator is in fluid communication with both the fluid delivery element and the aspiration element and is configured for two way flow of between 600 ml/h to 3 l/h. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1 – 6, 9 – 14, 17 – 20, 21, 23, 25 – 28 and 31 – 32 were rejected as being anticipated by US Patent No. 5,407,423 to Yoon (Yoon). This rejection is respectfully traversed.

Yoon discloses an endoscopic device for use in surgical procedures. The device comprises an elongate sponge means having a configuration in a compressed dry state to pass through a portal and an expanded configuration in a wet state after absorbing body fluids, and a spine means disposed in the sponge.

Yoon also fails to disclose or suggest the device of the amended independent claims. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 22 and 27 were rejected as being unpatentable over Robertson in view of U.S. Patent No. 6,033,390 to von Dyck (von Dyck). Claims 7-8, 15-16, 29-30 were rejected as being unpatentable over Yoon. Claims 23, 25 and 31-34 were rejected as being unpatentable over Yoon in view of U.S. Patent Number 6,951,555 to Suresh et al. (Suresh). These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d,488,20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490F.2d 981, 180 USPQ 580 (CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988)."

von Dyck discloses a continent ostomy port device. The device comprises a low profile face plate defining a relatively sealable aperture which is alignable with the opening of a stoma, a closure portion connectable to the face plate, a catheter portion and a retaining structure.

Suresh discloses a balloon catheter. The catheter comprises a catheter body, a hollow support member coupled to the catheter body and a collapsible lumen.

None of the references, whether taken alone or in combination disclose the subject matter of amended independent claims 1, 12, 21 and 31 as is explained above. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

/Carl J. Evens/

By:_____

Carl J. Evens
Reg. No. 33,874

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2518
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